

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARGARITA ROSSY, as Administrator of the
ESTATE OF JOSE HERNANDEZ-ROSSY

Plaintiff,

INDEX NO.: 1:17-CV-937

-against-

CITY OF BUFFALO, and its agents, servants and employees, and
BUFFALO POLICE DEPARTMENT P.O. JUSTIN TEDESCO,
BUFFALO POLICE DEPARTMENT P.O. JOSEPH ACQUINO,
And POLICE COMMISSIONER DANIEL DERENDA,
Individually and in their respective capacities, and
AMERICAN MEDICAL RESPONSE d/b/a “AMR”
And its agents, servants and employees

Defendants.

**Attorney Affirmation in Opposition to Plaintiff’s
Motion for Summary Judgment**

STATE OF NEW YORK)

COUNTY OF ALBANY) ss.:

TIMOTHY S. BRENNAN, ESQ., being duly sworn, deposes and says:

1. I am an attorney and counselor at law duly licensed to practice before the Courts of the State of New York and I am a partner with the law firm of Phelan, Phelan & Danek, LLP, attorneys for defendant American Medical Response (hereinafter “AMR”), in the within action. As such I am fully familiar with the facts, circumstances, and proceedings heretofore had herein.

2. I make this affirmation in opposition to plaintiff’s motion for summary judgment.

3. Plaintiff commenced this action asserting various civil rights claims pursuant to 42 U.S.C. section 1983, et seq., against the City of Buffalo and two police officers claiming that they

wrongful shot plaintiff's decedent (hereinafter "Rossy") during an incident on May 7, 2017 [Docket #98-4, Exhibit A to AMR's Motion for Summary Judgment, Complaint].

4. As against AMR, plaintiff asserts a single wrongful death cause of action sounding in medical malpractice [Docket #98-4, Exhibit A to AMR's Motion for Summary Judgment to AMR's Motion for Summary Judgment, Complaint].

5. The gravamen of the claim against AMR is that it allegedly delayed in treating, or improperly treated, plaintiff's decedent's gunshot wound [Docket #98-4, Exhibit A to AMR's Motion for Summary Judgment, Complaint; Docket #98-7, 8 & 9, Exhibits D-F to AMR's Motion for Summary Judgment, Plaintiff's Expert Disclosures].

6. At the conclusion of discovery, AMR moved for summary judgment [Docket #98]. Surprisingly, plaintiff also filed the present motion for summary judgment against AMR.

7. AMR now opposes plaintiff's motion for summary judgment and AMR continues to assert that plaintiff has failed to establish a claim against AMR.

8. In the interest of not overwhelming this Honorable Court with duplicative exhibits, AMR incorporates by reference herein all of the exhibits previously submitted in support of its motion for summary judgment [Docket #98].

9. As discussed in greater detail in the accompanying memorandum of law, plaintiff's motion must be denied and, more importantly, AMR is entitled to summary judgment dismissing all claims against it.

10. Simply stated, upon the present motion plaintiff failed to meet her burden to prove medical malpractice against AMR and, indeed, will be unable to make a prima facie showing of malpractice in this case.

11. For the reasons set forth throughout, it is respectfully submitted that AMR is entitled to summary judgment and that plaintiff's motion must be denied.

Conclusion

WHEREFORE, defendant American Medical Response, Inc., respectfully requests that this Honorable Court: (1) DENY plaintiff's motion for summary judgment; (2) GRANT summary judgment dismissing all claims, cross-claims and counter-claims asserted against it; and (2) GRANT such other and further relief as it deems just and proper.

DATED: June 6, 2022
Albany, New York

Yours, etc.,

PHELAN, PHELAN & DANEK, LLP

By: *Timothy S. Brennan*
TIMOTHY S. BRENNAN, ESQ.
Attorneys for Defendant,
American Medical Response
Phelan, Phelan & Danek, LLP
300 Great Oaks Boulevard, Suite 315
Albany, New York 12203
518-640-6900
Tim@ppdlawfirm.com